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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,

Case No. 3:13-cv-324-LRH-VPC

9 Plaintiff,

10 v.

11 \$167,070.00 IN UNITED STATES  
12 CURRENCY,

UNITED STATES' MEMORANDUM  
REGARDING RODRIGUEZ AND IN  
FURTHER OPPOSITION TO MOTION TO  
SUPPRESS EVIDENCE (#18)

13 Defendant.

14 STRAUGHN SAMUEL GORMAN,

15 Claimant.

16

17 Comes now plaintiff United States of America, through its undersigned counsel, and submits  
18 the following memorandum to comply with this Court's Order (#64) entered February 24, 2015.

19 By Order (#64) dated February 24, 2015, this Court stayed disposition of Gorman's motion to  
20 suppress (#18) "until the Supreme Court rules in *Rodriguez v. United States*." In the same Order, this  
21 Court directed the parties to submit supplemental briefing within 15 days after the Supreme Court  
22 ruled in *Rodriguez*. On April 21, the Supreme Court issued its decision in *Rodriguez*, --S.Ct--, 2015  
23 WL 1780927 (April 21, 2015). In accordance with this Court's February 24 Order, the United States  
24

1 submits the following memorandum in further opposition to Gorman's motion to suppress. This  
2 memorandum is timely filed.

3 In *Rodriguez*, the Supreme Court held that, absent consent or reasonable suspicion of criminal  
4 activity, a traffic stop may not be prolonged beyond the time reasonably needed to complete the tasks  
5 tied to the traffic infraction. The Supreme Court further held that an exterior dog sniff of the vehicle is  
6 not such a task. Accordingly, absent consent a police officer may not extend a traffic stop beyond the  
7 time reasonably needed to perform the "tasks tied to the traffic infraction" unless the police officer has  
8 a reasonable suspicion of criminal activity beyond the infraction which prompted the traffic stop.

9 In March 2012, a Nebraska police officer stopped a vehicle for driving on the shoulder of a  
10 highway. Rodriguez (the driver) stated that he had swerved to avoid a pothole. The officer checked  
11 Rodriguez's license, registration, and proof of insurance, ran a records check on Rodriguez and his  
12 passenger, and wrote Rodriguez a warning ticket. After delivering the warning, the officer asked  
13 Rodriguez for consent to walk a drug-sniffing dog around the car. Rodriguez did not consent. The  
14 officer then instructed Rodriguez to get out of the car and wait for a second officer to arrive because the  
15 first officer did not want to conduct the dog assessment without a back-up officer present. The second  
16 officer arrived a few minutes later and the dog alerted to Rodriguez's vehicle. A subsequent search of  
17 the vehicle yielded the discovery of a large bag of methamphetamine.

18 The Supreme Court held that the search violated the Fourth Amendment. The Court explained  
19 that "[l]ike a *Terry* stop, the tolerable duration of police enquiries in the traffic-stop context is  
20 determined by the seizure's 'mission' – to address the traffic violation that warranted the stop ... and  
21 attend to related safety concerns..." (cites omitted). The Court held that "[a]uthority for the seizure thus  
22 ends when tasks tied to the traffic infraction are – or reasonably should have been – completed." The  
23 Court acknowledged that these tasks typically include "checking the driver's license, determining  
24 whether there are outstanding warrants against the driver, and inspecting the automobile's registration

1 and proof of insurance" and, if necessary, issuing a traffic citation. The Court held that a dog sniff of the  
2 vehicle – which does not have a "close connection to roadway safety" – is not within the usual mission  
3 of the traffic stop because a dog sniff is not part of a legitimate traffic infraction investigation but rather  
4 is aimed at detecting evidence of "ordinary criminal wrongdoing"

5 In *Rodriguez*, the Supreme Court remanded the case for further proceedings to determine  
6 "whether reasonable suspicion of criminal activity justified detaining Rodriguez beyond completion of  
7 the traffic infraction investigation..."

8 The central holding of *Rodriguez* is that "[a]n officer, in other words, may conduct certain  
9 unrelated checks during an otherwise lawful traffic stop. But..., he may not do so in a way that prolongs  
10 the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual."

11 Nothing in the Supreme Court's decision in *Rodriguez* supports Gorman's motion to suppress  
12 evidence in this case or Gorman's theory of an impermissibly prolonged traffic stop. Rather, the  
13 decision in *Rodriguez* reinforces the legitimacy of the traffic stop and the legitimacy of the actions taken  
14 by Elko County Deputy Sheriff Fisher (ECSO Fisher) during the traffic stop. In this case, the testimony  
15 and the video/audio record demonstrated that the records check requested by ECSO Fisher was *still in*  
16 *progress* at the time of the exterior canine sniff of the motorhome. Accordingly, the exterior canine sniff  
17 of the motorhome did not prolong the traffic stop beyond the time reasonably needed to complete the  
18 tasks which the Supreme Court acknowledged to be routine tasks incident to a traffic stop.

19 Since the traffic stop initiated by ECSO Fisher was not prolonged *in any manner* by the exterior  
20 dog sniff because the dog sniff occurred while the records check was still in progress, there is no need to  
21 determine whether any further detention was justified by reasonable suspicion of criminal activity.  
22 Simply stated, there was no detention which needs to be justified other than the brief detention which  
23 was permissible in order to complete the legitimate traffic stop tasks. Prior to the positive dog alert  
24 (which provided the requisite probable cause for the search of the motorhome), Gorman was not

1 detained for any reason or for any period of time other than to complete the ordinary tasks tied to the  
2 observed traffic infraction. Accordingly, Gorman was not improperly detained at any time during the  
3 traffic stop or during the subsequent search of the traffic stop.

4 Moreover, there was no unreasonable delay in processing the ordinary traffic stop tasks prior to  
5 the dog alert. Gorman acknowledges that the dog alert occurred 12 minutes after the traffic stop was  
6 initiated. In *United States v. Turvin*, 517 F.3d 1097, 1101-02 (9<sup>th</sup> Cir. 2008), the Ninth Circuit expressly  
7 rejected the notion that a 14-minute traffic stop might be unreasonable stating that no hearing was  
8 necessary to “demonstrate the sensible observation that fourteen minutes is not unreasonably long for a  
9 traffic stop.”

10 The United States refers to its supplemental memorandum (#62) filed January 30, 2015, for a  
11 comprehensive discussion of the evidence presented at the December 15-16 evidentiary hearing and the  
12 arguments opposing Gorman’s motion to suppress. Based on the foregoing, Gorman’s motion to  
13 suppress evidence (#18) should be denied.

14  
15 Respectfully submitted,

16 DANIEL G. BOGDEN  
17 United States Attorney

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19 /s/ Greg Addington  
20 GREG ADDINGTON  
21 Assistant United States Attorney  
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1 CERTIFICATE OF SERVICE

2 It is hereby certified that service of the foregoing UNITED STATES' MEMORANDUM  
3 REGARDING RODRIGUEZ AND IN FURTHER OPPOSITION TO MOTION TO SUPPRESS  
4 EVIDENCE (#18) was made through the Court's electronic filing and notice system (CM/ECF) or, as  
5 appropriate, by sending a copy of the same by first class mail, addressed to the following addresses, on  
6 this 6th day of May, 2015.

7 Vincent Savarese III, Esq.  
8 Michael V. Cristalli, Esq.  
9 410 South Rampart Blvd., Suite 420  
10 Las Vegas, NV 89145

11 /s/ Greg Addington  
12 GREG ADDINGTON